IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

S.B. Civil Cross Objection No.229/2011

S.B.Civil Misc. Appeal No.40/2004
S.B. Civil Misc. Stay Application No. 27/2004
(The New India Insurance Co. Versus Krishan Lal & Anr.)

DATE OF JUDGMENT : 16.04.2015

HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. Kamal Gupta, counsel for the appellant
Mr. Jai Raj Tantia, counsel for the cross objector
Mr. Akshay Sharma, counsel for respondent(s)

Since both the appeal and cross objections relate to one incident and arise out of the common judgment and award passed by the learned Commissioner, hence the arguments have been heard together and they are being decided by this common judgment.

Brief facts of the case are that the claimant filed a claim petition before the Commissioner, Workmen Compensation Act with regard to injuries sustained by him in an accident which is said to have taken place on 10.12.2000. Thereafter notices were issued; reply was filed; certain issues were framed and after hearing all the parties, the learned Commissioner passed the aforesaid impugned judgment and award dated 23.10.2003, decreeing an amount of Rs. 4,99,152/- as

compensation together with interest.

Being aggrieved by the aforesaid judgment and award, appeal has been filed by the Insurance Co. while while cross objections have been filed by the non claimant.

Learned counsel for the Insurance co. has contended that the determination of age by the Commissioner is without any basis. He has further contended that the claimant respondent no.1 did not produce any document before the Commissioner, by which it can be said that the claimant respondent was getting Rs. 4000/- per month as salary and Rs. 50/- per day for nutrition. He has further contended that there was no material with the Commissioner, by which it can be said that the claimant had suffered permanent disability and the injury was caused to the claimant respondent no.1 in the course of employment and in the same incident. Further, the averments made in the claim petition have not been proved by the claimant. Hence the Hence, the impugned judgment and award passed by the learned Commissioner deserves to be quashed and set-aside.

On the other hand, learned counsel for the Cross Objector has contended that the impugned judgment and award passed by the

Commissioner is contrary to the provisions of the Act and the evidence emerging on record. He has further contended it is the Insurance Co. alone, which is liable to pay interest and penalty both and the respondent no.2 i.e. the owner cannot be held liable for it. He has further contended that the Commissioner held both the non claimants jointly liable for delay in payment of compensation, while the learned Commissioner in the same paragraph held that the delay had caused due to negligence of the Insurance Co. alone. In such circumstances, the respondent no.2 cannot be saddled with the liability to pay interest.

The learned counsel for the claimant(s) has defended the impugned judgment and award and stated the same to be just and proper. He has further contended that the Commissioner on the basis of oral as well as documentary evidence emerging on record, decided all the issues and rightly passed the impugned judgment and award, hence no interference is required by this court.

I have heard learned counsel for the parties and carefully perused the relevant material on record.

Looking to the facts and circumstances of the case, the findings arrived at by the

learned Commissioner while passing the impugned judgment and award are found to be just and proper. I am in unison with the findings arrived at by the Commissioner in its impugned judgment and award, which are reproduced as under:

"प्रार्थी पक्ष का तर्क थ कि प्रार्थी वाहन चलाने में पूर्णतया अयोग्य हो गय है उसे 100 प्रतिशत अर्जन क्षमत ह्रास हुआ है, तदनुसार ही क्षतिपूर्ति राशि दिलाई जये। अप्रार्थी सं0-1 का तर्क थ कि कर्मचार क्षतिपूर्ति अधिनियम 1923 के सह्डल I के पर्ट II के अनुसर घुटने के नीचे से पैर कटने की स्थिति में 60 प्रतिशत अर्जन क्षमत ह्रास होत है ऐसी स्थिति में प्रार्थी 60 प्रतिशत क्षतिपूर्ति राशि प्रप्त करने का अधिकारी है। प्रार्थी पक्ष विद्वान अधिवक्ता का तर्क थ कि प्रार्थी का घुटने के नीचे से पैर कटने से चलक कार्य हेतु पूर्णतया अयोग्य हो गय है, चलक लईसेन्स अथोर्टी भी ऐसे व्यक्तियें को चलक लईसेन्स जरी नहीं करती है। अत: प्रार्थी 100 प्रतिशत अर्जन क्षमत खे चुका है, प्रार्थी पक्ष के तर्को से मैं सहमत हूं प्रार्थी को हुई शरीरिक क्षति फलस्वरूप अर्जन क्षमत में शत्प्रतिशत ह्रास होन मन्नत हुं। कर्मचार क्षतिपूर्ति अधिनियम 1923 के सह्डल IV के अनुसर 30 वर्ष की आयु पर रिलेवेन्ट ऐज फैक्टर 207.98 को वेतन अर्थात रूपये 4000/- के 60 प्रतिशत अर्थात रूपये 2400/-से गुण करने पर देय क्षतिपूर्ति राशि 499152/-होती है, जे प्रार्थी प्रप्त करने का अधिकारी है, वाहन एवं चलक अप्रार्थी सं0-1 द्वारा बीमित थ, ऐसी स्थिति में क्षतिपूर्ति अदायगी हेतु अप्रार्थी सं0-1 को उत्तरदायी मन्नत हुं। तथ हुए विलम्ब के एवज में दुर्घटन दिनंक से दवं प्रस्तुत करने की दिनंक तक की अवधि का क्षतिपूर्ति राशि पर 9 प्रतिशत ब्यज अप्रार्थी सं0-2 व दवं प्रस्तुत करने की दिनंक से निर्णय दिनंक तक की अवधि का ब्यज अप्रार्थी सं0-1 को अदायगी हेतु निर्देशित करत हुं। इस प्रकार तनमी नं0-3 निर्णित की जती है कि प्रार्थी अधिनियम के प्रवधननुसर क्षतिपूर्ति राशि रूपये 499152/-अप्रार्थी संख्य-1 से, व ब्यज राशि देनें से प्रप्त करने का अधिकारी है।"

For these reasons, I do not find any ground to take a different view, than that of the view taken by the learned Commissioner. Hence, the aforesaid appeal as well as the cross objections, being without any substance, are hereby dismissed after confirming the judgment and award passed by the Commissioner.

(MAHESH CHANDRA SHARMA)J.

All corrections made in the judgment / order have been incorporated in the judgment / order being E-mailed.

Dilip Khandelwal
PA